

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring mining claim OR MC 12704 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

APPEARANCES: Kay M. Krebs, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Kay M. Krebs appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated February 27, 1981, declaring the Grubstake mining claim, OR MC 12704, abandoned and void for failure to file either evidence of assessment work or a notice of intention to hold the claim by December 30, 1979, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976),

and 43 CFR 3833.2. BLM declared the claim abandoned and void because neither of the required documents was filed by December 30, 1979.

The claim was located on November 18, 1978, and filed for recordation with BLM on February 14, 1979. On February 14, 1979, appellant also filed a receipt from the Office of County Clerk and Recorder, Josephine County, showing that a \$3 recording fee had been paid for recording the proof of labor. Appellant's proof of labor for the 1980 assessment year was filed with BLM on September 10, 1980.

On appeal appellant asserts that she has "every intention of holding and working this claim" and that she has performed and recorded her 1979 assessment work. Appellant explains that a copy of her 1979 proof of labor was mailed on February 27, 1979, the same day as it was recorded in Josephine County. A copy of the 1979 proof of labor, which was recorded with Josephine County, was attached to her appeal.

[1] Section 314(a)(1) and (2) of FLPMA, 43 U.S.C. § 1744(a)(1) and (2) (1976), and the pertinent regulation, 43 CFR 3833.2-1(c), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file either of the required instruments is conclusively deemed to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

Accordingly, appellants were required to file evidence of assessment work or a notice of intention to hold the claim by December 30, 1979. When appellants failed to file timely either of these documents, BLM properly held the claim to be abandoned and declared it void. James G. Robinson, 60 IBLA 134 (1981); Omco, Inc., 55 IBLA 77 (1981). Compliance with FLPMA and the pertinent regulations is mandatory, and this Board is not empowered to make exceptions to the requirements of the statute. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] Appellant contends that a copy of her proof of labor was mailed on February 27, 1979. The mailing of a notice of intention to hold or evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date. The Board had repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Marvin G. Stuck, 60 IBLA 197 (1981); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

